

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-1358

To be argued by
WILLIAM L. RICHMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

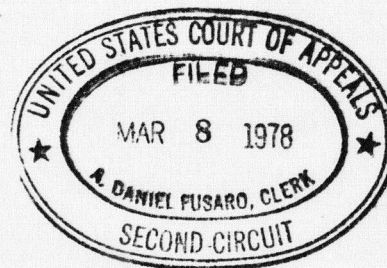
Plaintiff-Appellee,

-against-

EUGENE CRUTCH,

Defendant-Appellant.
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REPLY BRIEF FOR DEFENDANT-
APPELLANT EUGENE CRUTCH



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Appellant Eugene Crutch
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REPLY BRIEF FOR DEFENDANT-
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The Government's characterization of this appellant's claim of insufficiency as "baseless," stating that "this argument...pays scant attention to the record" (Gt. Br., p. 28) can only be applied to the Government's case. The claim of insufficiency finds support in the argument advanced by the Government if it adhered to the record instead of substituting its own version of the evidence to cover the weakness of its case.

I

After its concession that Eugene Crutch was not involved in the conspiracy at its inception, the Government then argues that he joined the conspiracy when defendant "Eli Nicoleau encountered difficulty in purchasing the Cadillac from Michael Kalimian;" that in response to Abbott's phone call to Eugene Crutch for assistance, "Eugene Crutch met Nicoleau at Kalimian's residence and assisted him in disposing of the car that evening." This statement is not supported by the record.

It is Abbott's testimony that after Nicoleau embarked on his mission to purchase the Kalimian automobile, he called Abbott with respect to a "problem with the license plates--that the owner of the car didn't want to give up the license plates." (Appendix, p. 95-A) The record further reveals that Eugene Crutch did not meet Nicoleau at Kalimian's residence nor did he assist him in disposing of the car as set forth in the Government's brief.

The actual testimony with respect to this situation as set forth in the record (Appendix, pp. 95A-96A) states*:

And so Eugene was waiting for me to return the call to him.

*Direct testimony, responding to prosecutor's questioning.

Q Miss Abbott, do you know where Eugene Crutch was?

A I think he was staying at one of the hotels in the city. I can't remember now. And Elie -- I called Elie back and I said, "Okay, go ahead." And so he went ahead and transacted the purchase of the car, called me back, he said, "Okay, I've got the car, but I don't have the license plate on it."

And I called Eugene at this time and told him where Elie was -- Elie had given me the address of where he was standing on some corner, and Eugene said that he would go down there and help Elie.*

The conflict between the version of this testimony can only be resolved against the Government, particularly since there is absolutely no evidence connecting Eugene Crutch with the conspiracy.

The second transaction alluded to by the Government in its effort to bring Eugene Crutch within the ambit of the conspiracy count refers to an August 1975 trip to California by Isiah Crutch, Abbott, Heitzner and Hee Soo Kim. The Government's brief goes on to say that "Eugene Crutch met Isiah Crutch in a Los Angeles hotel, and according to Abbott they had an extensive conversation concerning Isiah Crutch's 'business.'" (Gt. Br., p. 29)

*It is significant to note that the primary actor in this incident, Eli Nicoleau, was found not guilty of this count. (28) Nor was Eugene Crutch included in this count.

There is no support in the record for the Government's version of this incident. The record states:

...And I was to just be with Ike-- this was supposed to be a rest for me and at that time Eugene Crutch and Len Caro came to discuss business with Ike, and they went into the adjoining room that Jerry and Kim had occupied and discussed their business, and I was in the other room that Ike and I had occupied. So I do not know exactly what was going on in the other room. (Tr. 179, 11. 7-15)

The Government then continues that "while the four* were in California, they used counterfeit checks to make several purchases of foreign currencies from various banks," thereby attempting to involve Eugene Crutch in the purchases of foreign currency. (Gt. Br., p. 29)

II

It is quite evident that the "single transaction rule" is applicable, absent independent evidence tending to prove that Eugene Crutch had some knowledge of the broader conspiracy. Absent proof of knowledge of the broader conspiracy, a single act such as transportation of a stolen car or actual sale or purchase is insufficient evidence from which to draw an inference that Eugene Crutch knew about or acquiesced in the larger conspiracy.

* The four being Isiah Crutch, Abbott, Heitzner, Hee Soo Kim.

United States v. Agueci, 310 F. 2d
817, 836 (2d Cir. 1962), cert. denied,
372 U.S. 959 (1963)

United States v. Magnano, 543 F.2d
431, 434 (2d Cir. 1976), cert. denied,
429 U.S. 1091 (1977)

United States v. LaVecchia, 513 F.2d
1210, 1219 (2d Cir. 1975)

United States v. Torres, 503 F. 2d 1120,
1123-24 (2d Cir. 1974)

Conclusion

The evidence adduced by the Government was insufficient to involve Eugene Crutch in the conspiracy charged; there is not one iota of evidence of his participation in the planning, in the conversations, in the everyday activity of a co-conspirator. The guilt of Eugene Crutch was not established beyond a reasonable doubt. The conviction should be reversed.

Respectfully submitted,

WILLIAM L. RICHMAN
Attorney for Defendant-
Appellant

State of New York, County of New York
Diana Schneider

ss.:

being duly sworn, deposes and says; that deponent is not
a party to the action, is over 18 years of age and resides
at 475 Fifth Avenue, New York

That on the 7 day of March 1978
deponent served the within ~~notice to produce on~~ Reply
Brief on the United States
Attorney, Southern District
attorney(s) for United States

at 1 St. Andrews Plaza, N.Y. 10007
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a postpaid
properly addressed wrapper, in — a post office — official de-
pository under the exclusive care and custody of the United
States post office department within New York State.

Sworn to before me, this 7th
day of March 1978

[Signature]
Notary Public, State of New York
No. 31-7500000
New York County
Qualifies with N.Y. Co. Reg.
Term Expires March 30, 1978
[Signature]